

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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63 WEST 104TH STREET OWNER LLC and
1 OAK CONTRACTING LLC,

Plaintiffs,

-v-

No. 20 CV 5935-LTS

JAMES RIVER INSURANCE COMPANY,

Defendant.

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ORDER

WHEREAS, this action was commenced by the filing of a Complaint on July 31, 2020 (Docket Entry No. 5); and

WHEREAS, the Court has reviewed such Complaint to ascertain the basis for assertion of subject matter jurisdiction in this court; and

WHEREAS, such Complaint asserts that the Court has jurisdiction based on diversity of citizenship (28 U.S.C. § 1332), but does not allege facts sufficient to determine the citizenship of the members of plaintiffs 63 West 104th Street Owner LLC and 1 Oak Contracting LLC; and

WHEREAS, for purposes of diversity jurisdiction, the citizenship of an artificial business entity other than a corporation is determined by reference to the citizenship of its members, see C.T. Carden v. Arkoma Associates, 494 U.S. 185 (1990); E.R. Squibb & Sons v. Accident & Cas. Ins. Co., 160 F.3d 925 (2d Cir. 1998); Keith v. Black Diamond Advisors, Inc., 48 F. Supp. 2d 326 (S.D.N.Y. 1999); and

WHEREAS, "subject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power," E.R. Squibb & Sons, 160 F.3d at 929 (citation omitted), and Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action;" it is hereby

ORDERED, that plaintiff shall, no later than **August 14, 2020**, file and serve a Supplement to the Complaint containing allegations sufficient to demonstrate a basis for subject

matter jurisdiction in this Court or otherwise show cause in writing as to why this case should not be dismissed for lack of subject matter jurisdiction.

SO ORDERED.

Dated: New York, New York
August 3, 2020

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge